

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

NOV 25 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

SALOME CABALLERO,

Appellant.

2 CA-CR 2008-0049

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CR-05-287

Honorable James A. Soto, Judge

AFFIRMED

McMahon, Damon & McGuire

By Matthew J. McGuire

Tucson

Attorneys for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 After appellant Salome Caballero failed to appear for his criminal trial, despite having received personal notice of the trial date and having been informed that the trial would go forward in his absence, *see* Ariz. R. Crim. P. 9.1, he was tried in absentia by an

eight-member jury. He was convicted of aggravated assault and sentenced to a presumptive term of one year in prison.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record and found no arguable issue to raise on appeal. In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Caballero has not filed a supplemental brief.

¶3 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel’s recitation of the facts. Viewed in the light most favorable to upholding the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that, in September 2005, a Nogales police officer had arrested Caballero for disorderly conduct and placed him in the back of a marked patrol car. The officer was sitting in the front seat of the vehicle completing paperwork when he heard Caballero spit. After the officer told Caballero not to spit in the patrol car and turned back to his paperwork, Caballero spat at the officer, and his saliva hit the officer’s neck. Caballero then began cursing at the officer in English and Spanish, telling him he had hidden weapons he would use against “a bunch of those cops one of these days.”

¶4 Substantial evidence supported findings of all the elements necessary for Caballero’s conviction. *See* A.R.S. § 13-1203(A)(3) (assault committed by “[k]nowingly touching another person with the intent to injure, insult or provoke such person”); 2005 Ariz. Sess. Laws, ch. 166, § 3 (assault on peace officer is aggravated assault and class six felony under former A.R.S. § 13-1204(A)(5) and (B)); *see also State v. Mathews*, 130 Ariz. 46, 49, 633 P.2d 1039, 1042 (App. 1981) (affirming aggravated assault conviction for throwing urine on peace officer). And the presumptive sentence imposed was authorized by A.R.S. § 13-701(C)(5). We find neither fundamental nor reversible error and therefore affirm Caballero’s conviction and sentence.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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GARYE L. VÁSQUEZ, Judge

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JOSEPH W. HOWARD, Judge